**Clancy Carting & Storage Company, Inc.** ***and*** **Richard D. Furlong.** Cases 3–CA–16196 and 3–CA–16242

January 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon charges filed by Richard D. Furlong, an individual, on March 18 and April 19, 1991, the General Counsel of the National Labor Relations Board issued a consolidated complaint on May 31, 1991, against the Respondent, Clancy Carting & Storage Company, Inc., alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On June 12, 1991, the Respondent filed an answer, admitting in part and denying in part the allegations of the consolidated complaint and setting forth affirmative defenses. On October 8, 1991, the General Counsel issued an amended consolidated complaint. On October 15, 1991, the Respondent filed an "amended answer to consolidated complaint" admitting in part and denying in part the allegations of the complaint and setting forth affirmative defenses. By letter dated October 25, 1991, the Respondent withdrew its answers to both the consolidated complaint and amended consolidated complaint.[1]

On October 31, 1991, the General Counsel, by counsel, filed a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On November 6, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Amended Consolidated Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Withdrawal of the answers is tantamount to a failure to file a timely answer to the amended complaint.

In light of the withdrawal of the answer and the absence of good cause being shown for the lack of a timely filed answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a corporation, with an office and place of business in Rochester, New York, has been engaged in the intrastate transportation of freight and the operation of a public warehouse and storage facility. During the 12-month period ending May 31, 1991, the Respondent in the course and conduct of its business operations described above provided services valued in excess of $50,000 for other enterprises within the State of New York, including Eastman Kodak Company, an employer which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Chauffeurs, Teamsters, and Helpers Local Union 118, affiliated with the International Brotherhood of Teamsters, AFL–CIO,[2] the Union, is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, riggers, rigger helpers, packers of china and furniture, heavy hauling and freight employees.

Since about the late 1930s, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the unit employees and since that date the Union has been recognized as the representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 1, 1989, through May 31, 1992.

[1] In the October 25 letter, the Respondent's attorney stated that the Respondent had no funds to conduct a legal defense and because of its financial condition it was withdrawing its answers.

[2] The name has been changed to reflect the International's new official name.

At all material times the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

About February 28, 1991, the Respondent ostensibly ceased doing business, or sold its business, and terminated the unit employees. The Respondent engaged in this conduct without adequate prior notice to the Union and without having afforded the Union an adequate opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to the effects of that conduct.

Further, the Respondent has failed and refused to furnish to the Union information requested by the Union which is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

We find that by failing to provide the Union with adequate prior notice of, and an adequate opportunity to bargain about the effects of, its decision to cease doing business, or to sell its business, and terminate the unit employees, and by failing and refusing to furnish the Union information which is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees, the Respondent has violated Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By failing to provide the Union with adequate prior notice of, and adequate opportunity to bargain about the effects of, its ostensible decision to cease doing business, or to sell its business, and terminate the unit employees, and by failing and refusing to furnish the Union information which is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees, the Respondent has violated Section 8(a)(5) and (1) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to furnish to the Union, on request, information which is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

We shall also order the Respondent, on request by the Union, to bargain about the effects on unit employees of the Respondent's decision to cease doing business or to sell its business and terminate the unit employees. Further, as the unit employees were terminated, thereby eroding the collective strength of the bargaining unit, we find it necessary to provide a remedy to re-create in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for the Respondent. Accordingly, we shall require the Respondent to pay backpay to its unit employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968). Consequently, the Respondent shall pay unit employees at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on unit employees of its ceasing to do business or of the sale of its business; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which they were terminated to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all such sums shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in light of the Respondent's ceasing to do business or its sale of its business, we shall order the Respondent to mail signed copies of the notice to the Union and to all bargaining unit employees.

## ORDER

The National Labor Relations Board orders that the Respondent, Clancy Carting & Storage Company, Inc., Rochester, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish Chauffeurs, Teamsters, and Helpers Local Union 118, affiliated with the International Brotherhood of Teamsters, AFL–CIO information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

(b) Ceasing to do business or selling its business without giving timely notice to the Union, and without affording the Union an opportunity to bargain as the exclusive representative of the unit employees with respect to the effects of its decision on unit employees. The appropriate unit is:

> All truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, riggers, rigger helpers, packers of china and furniture, heavy hauling and freight employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

(b) On request, bargain in good faith with the Union as the exclusive representative of the unit employees regarding the effects of its decision to cease doing business or to sell its business and pay the unit employees represented by the Union who were terminated about February 28, 1991, their normal wages for the appropriate period as set forth in the remedy section of this Decision and Order.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Sign and mail copies of the attached notice marked "Appendix"[3] to all employees represented by the Union who were terminated on February 28, 1991, to their last known address; and similarly sign and mail copies to the Union at its business address.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse, on request, to provide Chauffeurs, Teamsters, and Helpers Local Union 118, affiliated with the International Brotherhood of Teamsters, AFL–CIO with the information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of our employees in the following unit:

> All trucks drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, riggers, rigger helpers, packers of china and furniture, heavy hauling and freight employees.

WE WILL NOT fail and refuse to bargain with the Union concerning the effects of our decision to cease doing business or to sell our business and terminate the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL, on request, provide the Union with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL, on request, bargain collectively with the Union concerning the effects on the unit of our decision to cease doing business or to sell our business and terminate the employees.

WE WILL pay employees in the unit who were employed by us on February 28, 1991, their normal wages for a period specified by the National Labor Relations Board, plus interest.

CLANCY CARTING & STORAGE COMPANY, INC.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."